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June 16, 2017

BY ECF
The Honorable Katherine B. Forrest
United States District Court
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2230
New York, New York 10007

Re: ***Aquazzura Italia SRL v. Ivanka Trump et al. No. 1:16-cv-4782 (KBF)* -- Letter Motion for a Protective Order Precluding the Deposition of Ivanka Trump**

Dear Judge Forrest:

We represent the Defendants/Counterclaim Plaintiffs Ivanka Trump, IT Collection LLC and Marc Fisher Holdings LLC (collectively, "Defendants") in this action. This letter is submitted pursuant to the Court's Order dated June 13, 2017 [Dkt. No. 83] to move the Court for a Protective Order, under Rule 26(c), Fed. R. Civ. P., to preclude the deposition of Ivanka Trump. The Declaration of Ivanka Trump in support of this letter motion ("Trump Decl.") is submitted herewith. The Defendants hereby certify pursuant to Rule 26(c)(1) that they have conferred in good faith with Aquazzura in an effort to resolve this dispute without court action.

I. INTRODUCTION

The Court should preclude the deposition of Ivanka Trump because Ms. Trump does not possess any unique information concerning Plaintiff's allegations and claims that cannot be obtained from another source that is more convenient and less burdensome. In particular, as Defendants' counsel informed Plaintiff, the current President of Defendant IT Collection LLC ("ITC"), Abigail Klem, has greater knowledge of the relevant facts than does Ms. Trump. At Defendants' offering, Plaintiff has agreed to take the deposition of Ms. Klem (now scheduled for June 29, 2017), yet it continues to press for the deposition of Ms. Trump, necessitating this Motion. But, Ms. Trump was not aware of the Aquazzura "Wild Thing" shoe prior to her sign-off of that season's shoe line and otherwise has no knowledge of any other relevant information. (Trump Decl. ¶¶ 5, 6.) Under the limitations imposed on discovery by Rule 26, the burden of a deposition of Ms. Trump would far outweigh any likely benefit to Aquazzura. In addition, Aquazzura cannot satisfy the two-prong test necessary to depose a high ranking government official, and for this reason as well, Defendants' motion should be granted.

II. FACTS

Plaintiff Aquazzura designs and sells women's footwear. Defendant Marc Fisher Holdings LLC ("MFH") designs and sells IVANKA TRUMP brand footwear under license from Defendant ITC. Under the license arrangement, MFH designs, produces, markets, promotes and sells IVANKA TRUMP brand footwear. ITC reviews and approves each finished line of shoes (there are four principal lines each year and two smaller "interim" lines) at MFH's showroom. Ivanka Trump no longer holds a position with ITC,[1] but during the relevant time period in 2015, when she was President of the company, she had no involvement in the design, production or sale of IVANKA TRUMP footwear, including the "Hettie" shoe. (*See* Trump Decl. ¶ 3.) Rather, Ms. Trump's involvement was limited to a final sign-off of each complete shoe line for each season. (*Id.* at ¶ 4.) Moreover, Ms. Trump was not aware of the Aquazzura style "Wild Thing" shoe at the time she signed off on the season line that contained the IVANKA TRUMP style "Hettie" shoe involved herein. (*Id.* at ¶ 5.)

III. ARGUMENT

A. The Court Should Preclude Ms. Trump's Deposition Under Fed. R. Civ. P. 26

Rule 26 limits the extent of discovery when, *inter alia:* (1) the discovery is unreasonably cumulative or duplicative; (2) the discovery can be obtained from some other source that is more convenient, less burdensome, or less expensive; or (3) the burden or expense of the proposed discovery outweighs its likely benefit. Rules 26(b)(1) and 26(b)(2)(C). In the present case, all three are applicable. First, any information about the facts regarding ITC, the "Hettie" shoe and whatever other relevant information known by Ms. Trump can be obtained from Ms. Klem, who at all times relevant has been and continues to be responsible for the day-to-day operation of ITC and possesses significantly greater knowledge of the facts germane to the litigation than does Ms. Trump. Therefore, the testimony of Ms. Trump would be cumulative, duplicative and unduly burdensome. Second, as Ms. Klem is located in New York and her deposition is set for June 29, it is more convenient and less burdensome for Aquazzura to obtain the information that it needs in discovery from Ms. Klem instead of Ms. Trump. Third, given Ms. Trump's lack of awareness of the Aquazzura "Wild Thing" shoe or knowledge of the facts concerning Aquazzura's trade dress and patent claims, the burden of taking Ms. Trump's deposition would far outweigh any likely benefit to Aquazzura.

Plaintiff has expressed two reasons why it supposedly needs to take Ms. Trump's deposition: (1) because Ms. Trump is a named defendant; and (2) it needs to inquire into Ms. Trump's knowledge of the Aquazzura "Wild Thing" shoe as of the time the "Hettie" shoe was reviewed and approved. As to the first, simply put, this is not the law. The limitations of Rule 26 apply to all discovery, regardless of whether the intended deponent is a named party. *See e.g. Walker v. Carter*, No. 12-CV-5384 (ALC)(RLE), 2014 U.S. Dist. LEXIS 192890, at *3 (S.D.N.Y. Dec. 8, 2014) (denying motion to compel defendant's deposition because "[defendant] has provided an affidavit that says he does not recall nor have any knowledge of the facts alleged in the Complaint"); *Milione v. City Univ. of N.Y.*, 950 F. Supp. 2d 704, 714 (S.D.N.Y. 2013) (issuing a protective order precluding the deposition of a named defendant, Chancellor Goldstein, because "Goldstein affirmed by affidavit that he has no personal knowledge of Plaintiff's employment, and the record does not indicate otherwise."). As for Plaintiff's second reason, as explained above, Ms. Trump has no such knowledge.[2] Therefore, the Court should preclude the deposition of Ms. Trump under Rule 26.

[1] Ms. Trump currently holds the title of Assistant to the President of the United States and works in the White House. (Trump Decl. ¶ 1.)

[2] Even if one or more of the Defendants did have prior knowledge of the Aquazzura "Wild Thing" shoe, this alone does not establish "intent" under Second Circuit trademark law. On the contrary, "[t]he intent

B. The Court Should Preclude Ms. Trump's Deposition Under the "Exceptional Circumstances" Doctrine

There is a second legal basis for the grant of a protective order on this application. As Ms. Trump holds a high ranking government position, the "exceptional circumstances" doctrine also applies. *See United States v. Morgan*, 313 U.S. 409 (1941) (holding that a high ranking government official should not – absent exceptional circumstances – be deposed or called to testify regarding the reasons for taking official action). The Second Circuit has expanded the "Morgan" doctrine to address "the need to 'protect officials from the constant distraction of testifying in lawsuits'" because high ranking officials have "greater duties and time constraints than other witnesses." *SEC v. Comm. on Ways & Means of the United States House of Representatives*, 161 F. Supp. 3d 199, 252 (S.D.N.Y. 2015) (internal citations omitted); *see also Lederman v. New York City Dep't of Parks & Recreation*, 731 F.3d 199, 203 (2d Cir. 2013) (affirming the district court's issuance of a protective order barring depositions of former Deputy Mayor Skyler and defendant Mayor Bloomberg because plaintiffs could not prove they had first-hand knowledge about the litigated claims or that the relevant information could not be obtained elsewhere).

Under the "Exceptional Circumstances" doctrine, depositions of high ranking government officials are permitted only upon satisfaction of a two-prong test: "(1) the deposition is necessary in order to obtain relevant information that cannot be obtained from any other source; and (2) the deposition would not significantly interfere with the ability of the official to perform his governmental duties." *Marisol A. by Forbes v. Giuliani*, 95 Civ. 10533 (RJW), 1998 U.S. Dist. LEXIS 3719, at *7 (S.D.N.Y. Mar. 23, 1998) (granting the defendants' motion to quash the deposition of defendant former Mayor Rudolph Giuliani notwithstanding his direct involvement in the subject matter of the action, because the relevant information could be obtained from other individuals).

Plaintiff will be unable to carry its burden of satisfying either prong of the test. First, the underlying relevant facts can be obtained Ms. Klem. In *Lederman v. Giuliani*, the district court cautioned that, "[t]he first prong of this test has been strictly imposed to the extent that if a person does not have unique, personal knowledge, that is not obtainable elsewhere, then the deposition should not be permitted." *See* 2002 U.S. Dist. LEXIS 19857, at *5 (S.D.N.Y. Oct. 17, 2002) (citation omitted). Such is the case here. Second, the deposition of Ms. Trump would be an unnecessary distraction and would interfere with her ability to perform her duties at the White House.

Accordingly, Defendants respectfully request that the Court grant their motion for a protective order to preclude the deposition of Ivanka Trump.

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to compete by imitating the successful features of another's product is vastly different from the intent to deceive purchasers as to the source of the product." *Streetwise Maps, Inc. v. Vandam, Inc*., 159 F.3d 739, (2d Cir. 1998). There can be no greater applicability of this principle than in fashion, where designers must use trending styles to fairly compete under their own brand names in order to cater to consumer demands, as the Defendants here have done.

Respectfully,

Darren W. Saunders

cc: John P. Margiotta via ECF
(Counsel for Plaintiff)